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IN THE

Supreme Court of the United States

October Term, 1968

No. 540

EASTERN AIR LINES, INC.,

Petitioner,

v.

DONALD A. SCOTT, Administrator of the Estate of THOMAS L. MOODY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No.

EASTERN AIR LINES, INC.,

Petitioner,

v.

DONALD A. SCOTT, ADMINISTRATOR OF THE ESTATE OF THOMAS L. MOODY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Eastern Air Lines, Inc., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW.

The Opinion of the Court by Circuit Judge Hastie reversing the judgment of the District Court in this action is printed as Appendix A to this Petition. The Order and Opinion on Rehearing affirming the judgment of the District Court is printed as Appendix B to this Petition.

JURISDICTION.

The Opinion on rehearing of the United States Court of Appeals for the Third Circuit was filed on June 28, 1968 (Appendix B) and the judgment of the Court of Appeals was filed on June 28, 1968 (Appendix C). The jurisdiction of this Court to review the decision below by writ of certiorari is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Does not maritime law exclusively govern the substantive issues in this action to recover for fatal injuries sustained in the crash of an aircraft in navigable waters?

2. Does not maritime law require reference to the laws of Massachusetts to determine the damages recoverable by plaintiff?

STATEMENT OF THE CASE.

Petitioner contends that the instant action is a maritime claim for death caused by negligence and that the general maritime law of the United States is solely applicable. Under the general maritime law of the United States, where fatal injuries are sustained in territorial waters of a state, survival and wrongful death claims for such fatal injuries are governed by the laws of the state in whose territorial waters the fatal injuries were sustained. To the extent that the Opinion on Rehearing in the United States Court of Appeals for the Third Circuit holds to the contrary, petitioner herein seeks review of such decision below.

By agreement of the parties and with the approval of the District Court below, the record on appeal to the United States Court of Appeals for the Third Circuit consisted of an Agreed Statement of the Case, as supplemented, which statement and exhibits thereto are printed in the Appendix to this Petition.

On October 4, 1960, a Lockheed Electra aircraft being operated by Eastern Air Lines, Inc., (Eastern) as Flight 375 took off from Logan International Airport, Boston, Massachusetts, and shortly thereafter crashed into navigable waters of Boston Harbor.

Thomas L. Moody, plaintiff's decedent herein, was a passenger on the aircraft and was killed in the crash.

The Complaint filed by the personal representative of decedent alleged that the fatal injuries were the result of "the negligence, breach of warranties, and breach of contract of defendants. . . ."[1] The case was brought as a civil action in the United States District Court for the

1. Plaintiff abandoned his breach of warranty theory before the case came to trial.

Eastern District of Pennsylvania as to Eastern, and it was consolidated for trial on the issue of liability with three other cases in which substantially identical complaints had been filed.

At trial, plaintiff offered evidence of various acts and/or omissions of the defendant, which plaintiff contended established negligence. It was not contended that any negligent act contributing to this crash took place in Pennsylvania.

In accordance with procedures established by the District Court, the jury first heard liability evidence only and, after charge on the law by the trial judge, the jury returned a verdict in favor of plaintiff and against Eastern on the liability issue.

At the conclusion of the damage evidence, the trial court refused Eastern's Points for Charge to the effect that damages could be awarded only in accordance with the laws of Massachusetts. The court charged the jury on the damage issues in accordance with the law of Pennsylvania. This charge appears in the Appendix. All appropriate exceptions to the charge were duly taken by Eastern.

The jury awarded damages under the Pennsylvania Wrongful Death and Survival Acts and judgment was entered on those verdicts. By Order, dated December 6, 1966, the District Court made final the judgment as to Eastern in accordance with the requirements of Federal Rule of Civil Procedure 54(b). Thereafter, Eastern appealed to the United States Court of Appeals for the Third Circuit.

Circuit Judge Hastie, writing for the unanimous three judge panel in the United States Court of Appeals for the Third Circuit, held that the trial judge had improperly applied Pennsylvania law rather than general maritime law. Circuit Judge Hastie pointed out that:

> "[T]he Court below has seen fit to abandon this rule and to substitute another. In our view, this was error. Maritime law is national law and its principles should, to the best of judicial ability, be recognized and applied uniformly. While an inferior court is always obligated to conform its judgments to the law as found or declared by the Supreme Court, the national character of maritime law underscores the need for such conformity in this area."

The judgment of the District Court was reversed and the cause remanded for a new trial on the issue of damages.

On rehearing, the judgment of the three judge panel was withdrawn and by a four-to-three decision, the judgment of the District Court was affirmed. Circuit Judge Staley sustained the application of Pennsylvania law by holding that the Complaint stated a claim "cognizable in assumpsit under Pennsylvania law as a cause of action for breach of contract of non-negligent carriage." As a contract claim, as opposed to a maritime tort, Judge Staley was of the view that the cause of action was not governed by general principles of maritime law. "As the contractual claim against Eastern is rooted in Pennsylvania law, it is governed directly by the teaching of *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U. S. 487 (1941), which directs District Courts to look to the choice of law rule of the state in which it sits."

Circuit Judge Staley further held that, opinions of the Pennsylvania Supreme Court to the contrary notwithstanding, an action for wrongful death could be brought in assumpsit under Pennsylvania law.

As a "separate and independent" ground for affirmance of the District Court's choice of Pennsylvania law, Judge Staley held that even if maritime law governs the tort aspects of the case, an admiralty court was not bound

to apply the law of the state in whose territorial waters the death had occurred but was free to apply the law of the state with the "most significant relations and contacts."

Circuit Judge Seitz, who had been a member of the three judge panel which reversed the judgment of the District Court, wrote a concurring opinion on rehearing voting to affirm the judgment of the District Court. In the view of Judge Seitz, the facts of the case gave to the plaintiff an election to proceed in admiralty where maritime law would be applied since a right of action under maritime law arose. Alternatively, the plaintiff could, at his election, proceed in an action at law since diversity jurisdiction was present, in which event the ordinary rules of a diversity civil case would control.

Circuit Judge Freedman, in a separate concurring opinion, joined in the affirmance of the District Court, finding it "unnecessary to decide whether maritime law or state law applies because I reach the same result in either case. If state law applies, either for the reasons given in Judge Staley's opinion or those given in Judge Seitz's opinion, I agree with them that the forum court must apply Pennsylvania conflicts rules which under *Griffith v. United Air Lines, Inc.*, 416 Pa. 1, 203 A. 2d 796 (1964), would invoke the so-called contacts doctrine and render the Pennsylvania rather than the Massachusetts law of damages applicable under the facts in this case. If federal maritime law applies, I would reach the same result because I agree with Judge Staley that the choice of law should in such a case also be made under the contacts doctrine."

Chief Judge Hastie, with whom Circuit Judges McLaughlin and Ganey joined, dissented. Adhering to the view of the case already expressed by the then unanimous panel of the court which originally heard the appeal, the dissenters supplemented that opinion with a statement of the basic errors in the analysis of the present majority.

Judge Hastie pointed out that the characterization of the claim as "contractual" was nothing other than "a legal fiction." Judge Hastie went on to state, "[T]o invoke the ancient common law procedural device of waiving the tort and suing in 'assumpsit' is merely to formalize and Latinize the fiction without substantiating it. In reality, the wrong here is a tort and nothing else."

Additionally, the dissenters reject the majority's conclusion that Pennsylvania law controls. The dissenters begin with the conception that the applicable rules of maritime law govern "with state law as such playing no authoritative role." While diversity of citizenship was alleged and established, federal maritime law is solely applicable.

In reviewing the long history of the development of maritime law in this area, the dissenters conclude that "in fashioning admiralty remedies for wrongful death in waters adjacent to a state, the federal courts uniformly have seen fit to create an admiralty remedy equivalent to the statutory wrongful death remedy of the state within whose territorial waters the wrong occurred." The dissenters further point out the confusion inherent in the view espoused by the majority, noting that it "would introduce new variables and new elements of uncertainty into the determination of admiralty awards for wrongful death. It would also invite forum shopping and lead to litigated controversy, such as this disaster already has produced, over the removal of causes. It is difficult to believe that the result of this change would be an improvement upon the present practice of consistently borrowing the remedy of the place of the wrong, one state that always is substantially concerned with and historically has provided a remedy for fatal accidents occurring within its borders."

Finally, the dissenters note that there is no authority for the proposition that admiralty may borrow the wrong-

ful death act of any state other than that within whose territorial waters the fatal accident occurred. The dissenters distinguish the precedents relied upon by the majority by noting that "both of these cases posed the question whether the maritime law of one nation or of another nation should be recognized as determinative of liability for a particular maritime injury. Here, in contrast, the only maritime law involved is our own federal law, and its authority in the present context is unchallenged."

REASONS FOR ALLOWING THE WRIT.

I. The Decision Below Is in Conflict With Decisions of the Supreme Court of the United States and With Decisions of Other Federal Courts on the Same Subject.

The Agreed Statement of the Case upon which the appeal was presented to the United States Court of Appeals for the Third Circuit makes it plain that the cause of action relied upon is negligence and not the breach of a contractual obligation. There is nothing in the Agreed Statement which can form the basis for the finding that the case was tried or submitted to the jury on a theory of breach of contract. Although the Complaint alleged "negligence, breach of warranties, and breach of contract of defendants" the issues at trial stated by the plaintiffs as to Eastern were limited to negligence and the claims founded on the alleged breach of warranties by plaintiff were specifically waived.

Further, in *Weinstein v. Eastern Air Lines, Inc.*, 316 F. 2d 758 (3rd Cir. 1963), cert. denied, 375 U. S. 940 (1963), the Court of Appeals had before it a group of cases for the deaths of passengers killed in the same crash as that involved in the instant appeal. The Court of Appeals there held that the tort claims arising out of the crash were within admiralty jurisdiction and made it clear that since the fatal injuries were sustained upon navigable waters, tort claims for such fatal injuries were of a maritime nature.

In holding that federal maritime law is not exclusively controlling of the question of the right of recovery for these maritime torts, the decision of the court below stands in bold conflict with the prior decisions of the Supreme Court of the United States and with decisions of other federal courts on the same subject: e.g. *The Tungus v. Skovgaard,*

358 U. S. 588 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U. S. 406 (1953); *Whorton v. T. A. Loving & Company*, 344 F. 2d 739 (4th Cir. 1965); *Larios v. Victory Carriers, Inc.*, 316 F. 2d 62 (2nd Cir. 1963); *J. B. Effenson Company v. Three Bays Corporation*, 238 F. 2d 611 (5th Cir. 1956); *Roth v. Cox*, 210 F. 2d 76 (5th Cir. 1954), aff'd 348 U. S. 207 (1955); *Jansson v. Swedish American Lines*, 185 F. 2d 212 (1st Cir. 1950).; see also *Massaro v. United States Lines*, 307 F. 2d 299 (3rd Cir. 1962).

This Court has firmly established the principle that where the tort is maritime so as to fall within the admiralty and maritime jurisdiction of the federal courts, the rights of the parties are governed by maritime law whether plaintiffs elect to pursue their common law remedy on the civil side of the court or whether they elect to resort to the admiralty side of the court. As was stated in *Pope & Talbot, Inc. v. Hawn, supra*, at page 409:

> "Nor can we agree that Hawn's rights must be determined by the law of Pennsylvania, under which, it is said, any contributory negligence would bar all recovery in this personal injury action. True, Hawn was hurt inside Pennsylvania and ordinarily his rights would be determined by Pennsylvania law. But he was injured on navigable waters while working on a ship to enable it to complete its loading for safer transportation of its cargo by water. Consequently, the basis of Hawn's action is a maritime tort, a type of action which the constitution has placed under national power to control in 'its substantive as well as its procedural features. . . .' Panama R. Co. v. Johnson, 264 U. S. 375, 386. And Hawn's complaint asserted no claim created by or arising out of Pennsylvania law. His right of recovery for unseaworthiness and negligence is rooted in federal maritime law. . . ."

It is not questioned that under maritime law, negligence causing harm on navigable water is actionable. But, as pointed out by Judge Hastie in the Opinion of the Court of March 30, 1967, "historic rules of admiralty law did not recognize such a cause as surviving after the injured person died. Neither did they provide dependents with the right to recover for the loss of the decedent's support. Congress has seen fit to provide a legislative remedy for this deficiency only where death occurs on the high seas."

Over the years, however, federal maritime law has fashioned a remedy to accommodate the claims of dependents and other survivors of the deceased victims of maritime torts. By "the adoption and consistent application of a novel but simply rule of borrowing", the uniform rule was stated by Judge Hastie as follows:

> "The maritime law will accord dependents and survivors rights of recovery neither more nor less extensive than they would enjoy under the law of the state within whose territorial waters the fatal maritime tort occurred. Hess v. United States, 1960, 361 U. S. 314; The Tungus v. Skovgaard, 1959, 358 U. S. 588; Western Fuel Co. v. Garcia, 1921, 257 U. S. 233; The H. S. Inc., 3d Cir. 1942, 130 F. 2d 341."

Thus, the principle has been developed by this Court that where death occurs within the territorial waters of a state, admiralty will look to the law of the state wherein such death occurred in order to "borrow" a right of recovery. The holding of the Third Circuit is in clear conflict with this principle and has created untold confusion and uncertainty in this and other litigation. This confusion and uncertainty, we submit, should impel this Court to grant certiorari and to review the decision below.

II. The Court Below Has Decided Important Questions of Federal Law Which Have Not Been, But Should Be Settled by This Court.

A. That Plaintiff Has an Election as to Applicable Substantive Law Under the Facts Presented by This Case.

The concurring opinion of Circuit Judge Seitz sets forth a novel and startling proposition of law. He asserts that even if "the claim arose from the death of a passenger on a commercial airplane which crashed into the navigable waters of the state, there would seem to be no basis for an overriding concern for the exclusive application of maritime law. . . . In the premises there seems to be no reason why, if he so elects, as here, his action may not be maintained as a state law action under the district court's diversity jurisdiction."

Whether an admitted maritime death action does in fact give rise to such an election of remedies presents a fundamental issue as to the scope of and limitations on the judicial authority of the United States. Section 1333 of the Judicial Code, 62 Stat. 931, 28 U. S. C. § 1333 provides that "The district courts shall have original jurisdiction . . . of: (1) any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

In *Chelentis v. Luckenbach,* 247 U. S. 372 (1918), an action was brought by a seaman to recover for injuries sustained on board a vessel and the issue was whether plaintiff, in a civil action, was entitled to sue on the basis of common law principles or whether he was bound by maritime law principles. The Court held that although he had a right under the "saving to suitors" clause to proceed on the civil side of the federal courts, maritime law must

govern. The Court further held that he had no right to common law damages but was limited to the maritime remedy of maintenance and cure.

In discussing the significance of the "saving to suitors" clause, this Court stated, at page 384:

> "The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dictionary. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law. Under the circumstances here presented without regard to the court where he might ask relief, petitioner's rights were those recognized by the law of the sea."

Indeed, even if the instant suit had been brought in a state court, it has always been thought that the general maritime law of the United States rather than state law would govern the substantive issues because the fatal injuries were sustained in or upon navigable waters. *Hess v. United States,* 361 U. S. 314 (1961); *Kermarec v. Compagnie Generale,* 358 U. S. 625 (1959).

If there is to be an election of remedies as the Third Circuit has announced and if the plaintiff may at his sole option choose entirely to disregard general principles of maritime law, then such change should be announced by the Supreme Court of the United States. The implications presented by such an election of remedies are far-reaching and strike at the very foundation of the desired goal of uniformity in maritime matters.

B. Choice of Law in a Maritime Claim for Death Within the Territorial Waters of a State.

On the authority of *Lauritzen v. Larsen*, 345 U. S. 571 (1953), and *Romero v. International Terminal Operating Co.*, 358 U. S. 354 (1959), the Third Circuit announced that in the case of a maritime claim for death within territorial waters of a state, maritime law may look to and apply the law of the state with "the most significant relations and contacts." Neither case supports this principle. Both involve the question of whether the maritime law of the United States or of some other *nation* should be recognized as determinative of the liability for a particular maritime injury. Nevertheless, the Third Circuit has attempted to use these cases as a basis for its radical departure from the principles long established by this Court.

Where the claim was for death occurring within the territorial waters of a state, our research has discovered no case where the court has failed to follow the territorial concept in applying the death statute of the place of the fatal injuries. On the contrary, in every case the law of the place of the tort has been applied in such maritime death cases: e.g. *Goett v. Union Carbide Corporation*, 361 U. S. 340 (1960); *United New York and New Jersey Pilots v. Halecki, Admx.*, 358 U. S. 613 (1959); *Meehan v. Gulf Oil Corporation*, 312 F. 2d 737 (3rd Cir. 1963); *Hill, Admx. v. Waterman Steamship Corporation*, 251 F. 2d 655 (3rd Cir. 1958), cert. denied, 359 U. S. 927 (1959); *Curtiss, Admx. v. Garcia*, 241 F. 2d 30 (3rd Cir. 1957); *The H. S., Inc.*, 130 F. 2d 341 (3rd Cir. 1942); *Klingseisen v. Costanzo Transportation Company*, 101 F. 2d 902 (3rd Cir. 1939).

The territorial concept was likewise applied in *Thompson Towing & Wrecking Association v. McGregor*, 207 Fed. 209 (6th Cir. 1913) and *Patton-Tully Transportation Co. v.*

Turner, 269 Fed. 334 (6th Cir. 1920). Both cases involved deaths of crew members aboard ship as a result of boiler explosions. In the *Thompson* case, it was held that although the explosion probably occurred in Canadian waters of Lake Huron, the vessel, named The Stewart, "was through ownership and registration domiciled in Michigan and was, as respects the enforcement of such a right, part of the territory of Michigan" (page 216).

In discussing the territorial concept embodied in general maritime law, the Court in *Thompson* stated as follows, at pages 216-217:

> "It is strongly contended that the Hamilton, and the class of cases it represents, are inapplicable because the Stewart was at the time of the accident lying in waters of another nation. The idea, of course, is that the local law of the place of injury and death must govern. No doubt this is the general rule; still, in determining the place of Workman's death, we must not overlook the question whether, in the circumstances of this case, *the Stewart was constructively part of Michigan*, so far as her 'internal management and discipline' were concerned." (Emphasis added.)

In *Patton-Tully*, the explosion occurred on the navigable waters of the Mississippi River in Mississippi. On appeal, the court held that the death claims were governed by the law of Tennessee, which was the home state of the vessel, basing said holding on its prior decision in *Thompson*.

III. Certiorari Is Required in Order to Resolve Mounting Confusion in This Developing and Substantial Area of Litigation.

Since the filing of the Opinion of the three judge panel below, at least five separate cases involving commercial aviation deaths within the navigable waters of a state have

followed the reasoning and the holding as set forth in Judge Hastie's Opinion.

Harris v. United Air Lines, Inc., 275 F. Supp. 431 (S. D. Iowa 1967) was the first of such cases and arose out of a crash into the navigable waters of Lake Michigan within the territorial waters of the state of Illinois. The issue, as here, was whether the death statute of the state of the crash site was exclusively applicable. Defendant sought to limit the amount of recovery as prescribed by the statutes of Illinois on the theory that maritime law controls. Plaintiff asserted that maritime law was inapplicable to an airplane crash fortuitously occurring in navigable waters and that the amount of recovery should be determined according to the law of Iowa because that state had the greatest interest in the subject matter of the litigation.

Relying heavily on the unanimous Opinion by Judge Hastie, the Iowa court held that the Iowa wrongful death statutes were inapplicable and that recovery was limited as prescribed by the statutes of Illinois. At pages 432 and 433, District Judge Hanson states:

> "While jurisdiction in this case was originally grounded on diversity, the facts show that federal question jurisdiction is involved. State choice of law rules need not be applied by a federal court in admiralty suits. See Scott v. Eastern Airlines, supra.
>
> "It remains to determine if federal law will permit resort to the wrongful death statutes of Iowa. Under maritime law, a cause of action for negligence resulting in death survives to dependents of the deceased. There is no federal statute providing such remedy when death occurs within the territorial water of a state, but the federal courts have consistently employed a rule of borrowing under which recovery is permitted according to the terms of the statutes of the

state within whose territorial waters the death has occurred.

* * *

"This Court agrees with the statement of the Court in the *Scott* case that if the borrowing rule is to be modified, the change should be made by the Supreme Court.

* * *

"In accordance with the policy of the cases cited above, and especially under the compelling authority of Scott v. Eastern Airlines, supra, this Court is bound to reject the reasoning of the New York Supreme Court and hold that the Iowa wrongful death statutes are inapplicable."

The New York Supreme Court cases referred to by District Court Judge Hanson were *Thomas v. United Air Lines, Inc.*, 281 N. Y. S. 2d 495 (1967) and *Zabor v. United Air Lines, Inc.*, 10 Avi. 17,345 (1967). On appeal to the New York Supreme Court, Appellate Division, the holdings of the lower court were unanimously reversed and it was held that an aircraft crash into navigable waters of a state, if wrongful, constitutes a maritime tort and the wrongful death statute of that state, under applicable federal maritime law, will govern the remedy and "the right is enforced as an integrated whole with whatever conditions and limitations are adopted by the creating state." *Thomas v. United Air Lines, Inc.* and *Zabor v. United Air Lines, Inc.*, 290 N. Y. S. 2d 753 (1968); 10 Avi. 17,944 (Opinion of April 30, 1968).

Identical issues were before the Appellate Division in the cases of *Harris v. United Air Lines, Inc.* and *Rarey v. United Air Lines, Inc.*, 290 N. Y. S. 2d 757 (1968), 10 Avi. 17,869 (1968), and in the unanimous Opinion dated April 30, 1968, the Appellate Division granted United's motion

for partial summary judgment dismissing all claims on behalf of each plaintiff in excess of the $30,000 limitation imposed by the Illinois Wrongful Death Statute.

The holdings in the cases discussed just above are in clear and direct conflict with the opinion of the en banc court of which petitioner now seeks review by this Court. Guidance is urgently required and has been called for by the courts and writers. In a published presentation entitled "Aerial Maritime Torts—Seas of Confusion"[2] it was concluded as follows:

> "Complete confusion now exists with respect to what choice of law rule is to be applied in an action to recover for wrongful death as a result of a maritime tort which relies for the basis of recovery upon a state wrongful death act. The decisions are in direct conflict. Serious questions are also unanswered with respect to a state's adoption of a conflicting choice of rule *vis-a-vis* the general maritime law choice of law rule and what effect the traditional overriding national interest in the uniformity of federal maritime law will have on the state action. Also unanswered is the constitutional question of whether a state's decisional law which conflicts with the federal maritime law is to be treated in the same constitutional fashion as state attempts to legislate in admiralty, matters solely within the domain of Congress."

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2. William J. Junkerman, The Forum, Vol. III, No. 3, April 1968, published by the American Bar Association, Section of Insurance, Negligence and Compensation Law.

CONCLUSION.

This case should be reviewed by this Court because the opinion below is in direct conflict with prior holdings of this Court and of other federal courts on the same subject.

Further, inasmuch as the court below has decided issues of federal law which are of fundamental importance to the very basis of admiralty jurisdiction which have not been heretofore settled by this Court, the decision of the Court of Appeals should be reviewed by this Honorable Court.

Additionally, subsequent decisions of other courts relying on the unanimous opinion by Judge Hastie are diametrically opposed to the decision of the court en banc of which petitioner seeks review. If the uniformly applied borrowing rule in cases of death occurring within the territorial waters of a state is to be modified, the change should be uniform throughout the United States and should be made by the Supreme Court.

For these reasons, petitioner respectfully requests that the petition for a writ of certiorari be granted.

Respectfully submitted,

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